



IN THE HOUSE

APRIL 7, 1987

RECEIVED FROM SENATE.

ON MOTION, CONSIDERATION PASSED  
FOR THE DAY.

APRIL 8, 1987

ON MOTION, CONSIDERATION PASSED  
FOR THE DAY.

APRIL 10, 1987

SECOND READING, AMENDMENTS  
CONCURRED IN.

APRIL 11, 1987

THIRD READING, AMENDMENTS  
CONCURRED IN.

SENT TO ENROLLING.

1 House BILL NO. 286  
 2 INTRODUCED BY Speth Sylvek Treit  
 3 Dunnehill Kellen Flayna Gilbert Jeff Kachake  
 4 **SALES** Bengton debs  
 5 A BILL FOR AN ACT ENTITLED: "AN ACT REGULATING THE DUTIES Compt  
 6 AND LIABILITIES OF IRRIGATION DISTRICTS AND PRIVATE PERSONS  
 7 OR ENTITIES OWNING OR OPERATING IRRIGATION DITCHES IN REGARD  
 8 TO PERSONAL INJURY AND PROPERTY DAMAGE; AND PROVIDING AN  
 9 APPLICABILITY DATE."

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Irrigation ditches -- duties relating to  
12 safety. An irrigation district or private person or entity  
13 owning or operating irrigation ditches must keep irrigation  
14 ditches in good general repair and condition, but has no  
15 duty to:

- 16 (1) erect fences;
- 17 (2) install grates or other protective devices where a
- 18 ditch goes underground or under a bridge or other object; or
- 19 (3) prevent access to ditches by persons or animals.

20 Section 2. Irrigation ditches -- nonliabilities. An  
21 irrigation district or private person or entity owning or  
22 operating irrigation ditches is not liable for:

- 23 (1) personal injury or property damage resulting from
- 24 floodwaters caused by rainfall or other weather conditions
- 25 or acts of nature;

1 (2) personal injury or property damage occurring on  
2 another's land and caused by water seepage that existed or  
3 began before the injured person first arrived on or obtained  
4 an interest in the land or before the damaged property was  
5 first placed on the land;

6 (3) injury to a person or property while, without  
7 authorization of the district, the person or property is on  
8 land or water controlled by the district; or

9 (4) death from a drowning.

10 Section 3. Attorney fees in action against irrigation  
11 district. In an action against an irrigation district for  
12 personal injury or property damage arising from irrigation  
13 district operations or on land or water controlled by the  
14 district, the prevailing party is entitled to costs and  
15 attorney fees from the opposing party.

16 Section 4. Requirement for approval of provisions for  
17 nonliability for personal injury, death, and property  
18 damage. Because sections 1 and 2 limit the duty and  
19 liability of irrigation districts, a two-thirds vote of each  
20 house of the legislature is required for enactment of  
21 sections 1 and 2. If sections 1 and 2 are not approved by  
22 the required vote, they are void and section 3 is valid.

23 Section 5. Applicability. This act applies only to  
24 claims filed after the effective date of this act.

-End-

-2-

**INTRODUCED BILL**  
**HB-286**



STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB286, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

This bill would regulate the duties and liabilities of irrigation districts and private persons or entities owning or operating irrigation ditches in regard to personal injury and property damage.

ASSUMPTIONS:

1. The proposed law limits the liability of keeping irrigation ditches in good general repair and condition to the private person or entity owning or operating irrigation ditches.
2. The Lands Department grants easements for irrigation ditches constructed on trust lands, but does not own or operate irrigation systems.
3. The Department of Natural Resources and Conservation presently assists its project users to "...keep irrigation ditches in good general repair and condition." The Department plans to continue this practice regardless of the status of this bill.
4. The Department of Natural Resources and Conservation does not budget for defense in regard to liability suits against irrigation districts.

FISCAL IMPACT:

There is no fiscal impact to the Department of State Lands or the Department of Natural Resources and Conservation.

EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

This bill may reduce the liability insurance premiums paid by irrigation districts. Not data is available on current total premium paid.

David L. Hunter DATE 1/24/87  
DAVID L. HUNTER, BUDGET DIRECTOR  
Office of Budget and Program Planning

Gary Spaeth DATE 26 Jan 87  
GARY SPAETH, PRIMARY SPONSOR

Fiscal Note for HB286, as introduced.

**HB-286**

APPROVED BY COMMITTEE  
ON JUDICIARY

1 HOUSE BILL NO. 286  
2 INTRODUCED BY SPAETH, LYBECK, TVEIT, MEYERS, COBB,  
3 SWYSGOOD, SALES, KELLER, BENGTSON, HAYNE, GILBERT,  
4 POFF, KOEHNKE, SCHYE, COMPTON  
5

6 A BILL FOR AN ACT ENTITLED: "AN ACT REGULATING THE DUTIES  
7 AND LIABILITIES OF IRRIGATION DISTRICTS AND PRIVATE PERSONS  
8 OR ENTITIES OWNING OR OPERATING IRRIGATION DITCHES IN REGARD  
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18 DAMAGE has no duty to:

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21 ditch goes ~~underground~~ or under a bridge or other object; or
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5 another's land and caused by water seepage that existed or  
6 began before the injured person first arrived on or obtained  
7 an interest in the land or before the damaged property was  
8 first placed on the land, IF THE SEEPAGE DOES NOT CARRY  
9 TOXIC CHEMICALS ONTO THE LAND;

10 (3) injury to a person or property while, without  
11 authorization of the district OR PRIVATE PERSON OR ENTITY,  
12 the person or property is on land or water controlled by the  
13 district OR PRIVATE PERSON OR ENTITY, UNLESS THE IRRIGATION  
14 DISTRICT OR PRIVATE PERSON OR ENTITY ENGAGED IN WILLFUL OR  
15 WANTON MISCONDUCT; or

16 (4) death from a drowning, UNLESS THE IRRIGATION  
17 DISTRICT OR PRIVATE PERSON OR ENTITY WAS GROSSLY NEGLIGENT  
18 OR ENGAGED IN WILLFUL OR WANTON MISCONDUCT.

19 ~~Section 3.--Attorney--fees--in--action--against--irrigation~~  
20 ~~district--in--an--action--against--an--irrigation--district--for~~  
21 ~~personal--injury--or--property--damage--arising--from--irrigation~~  
22 ~~district--operations--or--on--land--or--water--controlled--by--the~~  
23 ~~district;--the--prevailing--party--is--entitled--to--costs--and~~  
24 ~~attorney--fees--from--the--opposing--party.~~

25 Section 3. Requirement for approval of provisions for



1 nonliability for personal injury, death, and property  
2 damage. Because sections 1 and 2 limit the duty and  
3 liability of irrigation districts, a two-thirds vote of each  
4 house of the legislature is required for enactment of  
5 sections 1 and 2. If sections 1 and 2 are not approved by  
6 the required vote, they are void and section 3 is valid.

7 Section 4. Applicability. This act applies only to  
8 claims filed after the effective date of this act.

-End-

HOUSE BILL NO. 286

INTRODUCED BY SPAETH, LYBECK, TVEIT, MEYERS, COBB,  
SWYSGOOD, SALES, KELLER, BENGTON, HAYNE, GILBERT,  
POFF, KOEHNKE, SCHYE, COMPTON

A BILL FOR AN ACT ENTITLED: "AN ACT REGULATING THE DUTIES  
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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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DAMAGE has no duty to:

- (1) erect fences;
- (2) install grates or other protective devices where a  
ditch goes underground or under a bridge or other object; or
- (3) prevent access to ditches by persons or animals.

Section 2. Irrigation ditches -- nonliabilities. An  
irrigation district or private person or entity owning or  
operating irrigation ditches is not liable for:

(1) personal injury or property damage resulting from  
floodwaters caused by rainfall or other weather conditions  
or acts of nature;

(2) personal injury or property damage occurring on  
another's land and caused by water seepage that existed or  
began before the injured person first arrived on or obtained  
an interest in the land or before the damaged property was  
first placed on the land, IF THE SEEPAGE DOES NOT CARRY  
TOXIC CHEMICALS ONTO THE LAND;

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DISTRICT OR PRIVATE PERSON OR ENTITY ENGAGED IN WILLFUL OR  
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 3 liability of irrigation districts, a two-thirds vote of each  
 4 house of the legislature is required for enactment of  
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 6 NOT by the required vote, they are ~~void and section 3 is~~  
 7 ~~valid~~. SHALL READ AS FOLLOWS:

8 SECTION 1. IRRIGATION DITCHES -- DUTIES RELATING TO  
 9 SAFETY. A PRIVATE PERSON OR ENTITY OWNING OR OPERATING  
 10 IRRIGATION DITCHES MUST KEEP THE IRRIGATION DITCHES IN GOOD  
 11 GENERAL REPAIR AND CONDITION, BUT FOR THE PURPOSE OF  
 12 PROTECTING PERSONS AND PROPERTY FROM INJURY OR DAMAGE HAS NO  
 13 DUTY TO:

- 14 (1) ERECT FENCES;
- 15 (2) INSTALL GRATES OR OTHER PROTECTIVE DEVICES WHERE A  
 16 DITCH GOES UNDER A BRIDGE OR OTHER OBJECT; OR
- 17 (3) PREVENT ACCESS TO DITCHES BY PERSONS OR ANIMALS.

18 SECTION 2. IRRIGATION DITCHES -- NONLIABILITIES. A  
 19 PRIVATE PERSON OR ENTITY OWNING OR OPERATING IRRIGATION  
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- 21 (1) PERSONAL INJURY OR PROPERTY DAMAGE RESULTING FROM  
 22 FLOODWATERS CAUSED BY RAINFALL OR OTHER WEATHER CONDITIONS  
 23 OR ACTS OF NATURE;
- 24 (2) PERSONAL INJURY OR PROPERTY DAMAGE OCCURRING ON  
 25 ANOTHER'S LAND AND CAUSED BY WATER SEEPAGE THAT EXISTED OR

1 BEGAN BEFORE THE INJURED PERSON FIRST ARRIVED ON OR OBTAINED  
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 3 FIRST PLACED ON THE LAND, IF THE SEEPAGE DOES NOT CARRY  
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5 (3) INJURY TO A PERSON OR PROPERTY WHILE, WITHOUT  
 6 AUTHORIZATION OF THE PRIVATE PERSON OR ENTITY, THE PERSON OR  
 7 PROPERTY IS ON LAND OR WATER CONTROLLED BY THE PRIVATE  
 8 PERSON OR ENTITY, UNLESS THE PRIVATE PERSON OR ENTITY  
 9 ENGAGED IN WILLFUL OR WANTON MISCONDUCT; OR

10 (4) DEATH FROM A DROWNING, UNLESS THE PRIVATE PERSON  
 11 OR ENTITY WAS GROSSLY NEGLIGENT OR ENGAGED IN WILLFUL OR  
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13 Section 4. Applicability. This act applies only to  
 14 claims filed after the effective date of this act.

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 15 claims filed after the effective date of this act.

-End-

SENATE

STANDING COMMITTEE REPORT

March 27 19<sup>87</sup>

MR. PRESIDENT

We, your committee on SENATE JUDICIARY

having had under consideration HOUSE BILL No. 286

Third reading copy ( blue color )

Personal injury and property damage liability of irrigation districts. Spaeth (Lybeck)

Respectfully report as follows: That HOUSE BILL No. 286

~~xxxx~~

be amended as follows:

1. Page 1, line 21. Following: "goes" Insert: "underground or"

2. Page 3, line 16 Following: "GOES" Insert: "underground or"

MB

~~XXXXXXXXXX~~

~~XXXXXXXXXX~~

AND AS AMENDED BE CONCURRED IN

*[Handwritten signature]*

Senator Mazurek

Chairman.

3-27-87  
445  
5:00